

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CRIMINAL APPLICATION NO.510 OF 1999

For Approval & Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether reporters of local papers may be allowed to see the judgment ?
 2. To be referred to the reporters or not ?
 3. Whether their lordships wish to see the fair copy of the judgment ?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
 5. Whether it is to be circulated to the Civil Judge?

UPENDRABHAI MANEKLAL SHAH
VERSUS
PRAKASH DINESHBHAI TRIVEDI & ANR.

Appearance:

Petitioner present in-person
MR BT RAO for Respondent No.1
MR SAMIR DAVE for Respondent No.1

Coram: MR.JUSTICE S.K. Keshote, J
Date of decision: 20/2/2001

C.A.V. JUDGMENT

#. This special criminal application is filed by petitioner through advocate Mr.Y.N.Ravani. Throughout the proceedings, Mr.Ravani was appearing for the petitioner. On the last date, this court asked Mr.Ravani to take instructions from the petitioner whether he is ready to deposit the due amount of the financier in the court so that the court may consider the request of the petitioner for release of the vehicle in his favour. What transpired in between the petitioner and Mr.Ravani, is not disclosed but today, he filed a copy of the letter addressed to the petitioner wherefrom it transpires that he retired from this case. Once an advocate desires for his retirement in the case, this court has no option more so when the client has consented to permit retirement and accordingly Mr.Ravani is ordered to be retired from this case. Though I do not appreciate this approach of the litigants and in such matters, seldom, permission is to be granted to the petitioner to argue the matter in-person. It is permissible to the litigant to file appearance in-person and argue also but once he has opted to file petition through advocate and the advocate continues to appear in the proceedings, then when the court has asked him to take instructions, this approach of the petitioner to pray for retirement of advocate from the case deserves to be deprecated. Once an advocate has been engaged by the litigant, the court ordinarily should not have permitted for his retirement so as to make out a case by the petitioner to give him right to make submission in-person. In a petition under Article 226/227 of the Constitution, otherwise also, as a rule, it is expected from the litigants to present the same through advocates. These are constitutional matters wherein presence of advocates is necessary so that effective assistance may come from the Bar. It is understandable that because of financial condition a litigant may not be in a position to engage the advocate but after this Legal Services Authorities Act, 1985 which has been brought in force and to that category of persons, it is a right conferred of free legal aid. So there cannot be any difficult for the litigant of this category also to have assistance of advocate. Be that as it may, in this case, this court has given three options to the petitioner, first, either to continue Mr.Ravani as his advocate or if he wants to change the advocate that is is right and he can change the advocate and third is if he is not in a position to engage advocate, to approach to the Gujarat High Court Legal Services Committee to provide him free legal aid or the court has also asked him that it can provide him amicus-cuarie from amongst the lawyers present in the court. But the only insistence of the petitioner was that he may be permitted

to argue the matter personally. I permitted him to argue the matter personally as an exception. He argued the matter. Learned A.P.P. is handicap in the matter as he is not having brief with him. Be that as it may, having heard the petitioner in-person, I am satisfied that the order of the Addl.. Sessions Judge, Vadodara, is perfectly legal and justified. It does not call for interference of this court under Article 227 of the Constitution. The petitioner is asked by the court that if he is ready to pay outstanding dues of financier, the court may release the vehicle in his favour. He stated that this amount has been paid by him to financier. This court asked him to show receipts of payment of amount. He stated that the financier has not given receipts. It is very difficult to believe that the petitioner would not have insisted for receipts on making payment of amount of installments of loan. In absence of receipts of payment of amount of loan, it is difficult to accept that the mount has been paid by petitioner. The petitioner seems to be not an honest person.

#. In the result, this special criminal application fails and the same is dismissed. Rule discharged. Interim relief, if any, earlier granted and continues till date, stands vacated. As the A.P.P. is not having the Brief and not provided assistance, though it is a fit case where costs could be awarded, no order as to costs. Mr.B.T.Rao appeared in the matter only when this court has already dictated the judgment and in view of this fact, no order as to costs in favour of respondent No.1 also.

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(sunil)